APPENDIX A
Not Final Until Time Expires To File Rehearing Petition And, If Filed, Disposed Of

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

January Term,A.D. 1968

Case No. 66-1041

ROBERT WILBUR BALL, Appellant,

vs.

THE STATE OF FLORIDA, Appellee.

Opinion Filed March 5, 1968

An Appeal from the Circuit Court for Dade County, Francis J. Christie, Judge.

Robert O. Collins (Hollywood); Milton E. Grusmark and Natalie Baskin, for appellant.

Earl Faircloth, Attorney General and Jesse J. McCrary, Jr., Assistant Attorney General, for appellee.

Before Charles Carroll, C.J., and Pearson and Hendry, JJ.

Per Curiam.

Appellant was indicted for first degree murder of his estranged wife and her lover. As to each homicide he was found by a jury to be guilty of second degree murder, was so adjudged and sentenced to life imprisonment.

On appeal it is contended the evidence

was insufficient to overcome the presumption of defendant's innocence and to disprove self-defense. We hold the contention is without merit. Examination of the record discloses there was sufficient competent evidence to sustain the verdicts. No useful purpose would be served by detailing the evidence here.

We have considered, in the light of the record and briefs, the appellant's contention of errors at the trial consisting of rulings on admissibility of evidence and of photographs, and we find no prejudicial error.

On the further contention that the trial court committed error by commenting on the evidence, and in failing to "define all elements of homicide" in the charges, we hold no reversible error is shown. Comments of the court as alluded to were not specified. See Reddit v. State, Fla. 1955, 84 So.2d 317. The court charged the jury on the degrees of homicide, and the charge set forth the elements of each offense. No particular definitions or wording of definitions thereof were requested to be charged. See Webster v. State, 141 Fla. 374, 193 So. 303.

No reversible error having been shown, the judgments are affirmed.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

January Term, A.D. 1968

Case No. 66-1041

ROBERT WILBUR BALL, Appellant,

vs.

THE STATE OF FLORIDA, Appellee.

Opinion Filed March 22, 1968

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

Clerk District Court of
Appeal, Third District

cc: Milton E. Grusmark
Robert O. Collins
Jesse J. McCrary, Jr.

/m

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT IN AND FOR DADE, COUNTY, FLORIDA)

APPENDIX C

IN THE SUPREME COURT OF FLORIDA

July Term, A.D. 1968

Opinion Filed Tuesday, July 23, 1968

Case No. 37.428

DISTRICT COURT OF APPEAL
THIRD DISTRICT

ROBERT WILBUR BALL, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jursidictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdictions, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

ATTEST:

Sid J. White
Clerk Supreme Court.

cc: Hon. W. P. Carter
Hon. E. B. Leatherman
Hon. Milton E. Grusmark
Hon. Earl Faircloth
Hon. Jesse J. McCrary, Jr.

APPENDIX D
Transcript of Testimony Pages 637-638

A I said, "Put your clothes on and leave my house. My wife and I want to talk."

With that, the man who later turned out to be Nash, said, " I will take care of him."

He reached over to the side and came up with a revolver, and the first shot hit me in the stomach.

I said, "Please leave, I will explain this;" and he kept firing.

My left arm was shattered, and I knew at that point that I had to do something, and I drew my gun.

It seemed like 100 years I pulled that hammer back, and from then on I don't remember firing.

The next thing I knew I had to get help. I remember screaming at the door. I knew they were shot, because I was shot, and I knew I fired.

My next recollection, I was at the front door screaming for help. I knew I had to get help, because if I passed out, maybe everybody would die. I didn't know they were dead. I screamed as long as I could.

Finally, leaving the door open, in case no one did hear me someone may see the door open.

I went on the couch, and the next thing I know, the police officer came in. From there on--

The unlawful killing of a human being when perpetrated from a premeditated design to effect the death of the person killed, or any human being, shall be murder in the first degree and shall be punishable by death.

The penalty prescribed by law for the offense of murder in the first degree is death, unless a majority of the jurors recommend the defendant to the mercy of the Court, in which case the penalty for first degree murder is imprisonment for life in the State Penitentiary.

Murder in the second degree is the unlawful killing of a human being when perpetrated by an act imminently dangerous to another and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual.

I have just given you a definition of second degree murder in the language of the statute of this state. The main characteristic which distinguishes second degree murder from first degree murder is the absence of any premeditated design to take life. This does not mean necessarily the absence of any intention to kill, but the absence of a premeditated design to kill. A homicide caused by wanton or reckless act without intention to kill may be murder in the second degree where it was performed by a reckless and imminently dangerous act under circumstances indicating that the wrongdoer is of a depraved mind and is acting in disregard for the safety of human life.

Punishment for murder in the second degree is confinement in the State Prison for a period of from 20 years to life imprisonment, in the discretion of the Court.

Transcript of Testimony Pages 697-699

If, after having heard and carefully considered all of the evidence in the case, you have any reasonable doubt in your minds as to the defendant's guilt of any crime within the charge, then it will be your duty to acquit him. If, on the other hand, you are satisfied beyond such reasonable doubt as to his guilt, then it will be your duty to convict him of such crime as to which you are satisfied beyond a reasonable doubt, you being the sole judges of the testimony and the credibility of the witnesses.

Your verdict must be unanimous, that is, it must be the verdict of each and every juror, each juror being responsible for his own verdict, and you must concur before you can find any verdict in the case.

If you find the defendant, Robert Wilbur Ball, Sr., guilty of murder in the first degree of either or both of the indictments, the form of your verdict will be:

"We, the jury, find the defendant, Robert Wilbur Ball, Sr., guilty of murder in the first degree, as charged in the indictment. So say we all."

In a capital case such as this where the jury convicts a defendant of murder in the first degree, a majority of their number may recommend him to the mercy of the Court, and such recommendation reduces the punishment from death to life imprisonment. In the event you find the defendant guilty of murder in the first degree of either or both of the indictments, a majority of you recommend him to the mercy of the

Court, the form of your verdict shall be:

"We, the jury, find the defendant, Robert Wilbur Ball, Sr., guilty of murder in the first degree, as charged in the indictment. So say we all. And a majority of the jury recommend him to the mercy of the Court."

If you find the defendant guilty of murder in the second degree of either or both of the indictments, the form of your verdict will be:

"We, the jury, find the defendant, Robert Wilbur Ball, Sr., fuilty of murder in the second degree. So say we all."

If you find the defendant guilty of murder in the third degree of either or both of the indictments, the form of the verdict will be:

"We, the jury, find the defendant, Robert Wilbur Ball, Sr., guilty of murder in the third degree. So say we all."

If you find the defendant guilty of manslaughter of either or both of the indictments, the form of your verdict will be:

"We, the jury, find the defendant, Robert Wilbur Ball, Sr., guilty of manslaughter. So say we all."

If you find the defendant not guilty of either or both of the indictments, the form of your verdict will be:

"We, the jury, find the defendant, Robert Wilbur Ball, Sr., not guilty. So say we all."